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David L. Meier
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DOCKET FILE COPY ORIGINAL

October 3, 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

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OCT 3 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of:

Amendment of the Commission's Rules to
Establish Competitive Service Safeguards for
Local Exchange Carrier Provision of
Commercial Mobile Radio Services

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WT Docket No. 96-162

Dear Mr. Caton:

Enclosed are an original and nine copies plus two extra public copies of the Comments of Cincinnati Bell Telephone Company in the above referenced proceeding. A duplicate original copy of this letter and attached Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to me at the above address or by telephone on (513) 397-1393.

Sincerely,

David L. Meier

Enclosure

cc: International Transcription Services, Inc.
Bobby Brown, Wireless Telecommunications Bureau (two copies)

No. of Copies rec'd
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
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Amendment of the Commission's Rules to)	WT Docket No. 96-162
Establish Competitive Service Safeguards)	
for Local Exchange Carrier Provision of)	
Commercial Mobile Radio Services)	
)	
Implementation of Section 601(d) of the)	
Telecommunications Act of 1996, and)	
Sections 222 and 251(c)(5) of the)	
Communications Act of 1934)	
)	
Amendment of the Commission's Rules to)	GEN Docket No. 90-314
Establish New Personal Communications)	
Services)	
)	
Requests of Bell Atlantic-NYNEX Mobile,)	
Inc., and U S West, Inc., for Waiver of)	
Section 22.903 of the Commission's Rules)	
)	

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company ("CBT"), an independent, mid-size local exchange carrier ("LEC"), submits these comments in response to the Commission's July 25, 1996 Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding. In this NPRM, the Commission seeks comments on a proposed comprehensive review of the existing regulatory framework for the provision of Commercial Mobile Radio Services ("CMRS"). Further, the Commission proposes certain modifications to its current rules which it sees as necessary to implement provisions of the Telecommunications Act of 1996

(the "Act") that govern the joint marketing of CMRS and landline services and that provide protection for customer proprietary network information ("CPNI").

Through this NPRM, the Commission also attempts to respond to one of the issues remanded to the Commission by the decision of the United States Court of Appeals for the Sixth Circuit in *Cincinnati Bell Telephone v. FCC*, 69 F.3d 752 (6th Cir. 1995). In response, the Commission proposes to eliminate the current Part 22 requirement that Bell Operating Companies ("BOCs") must provide cellular service through a structurally separate corporation, and seeks comment on the appropriate transition to implement this proposal.¹

CBT will limit its comments in this matter to the Commission's proposal to impose additional restrictions on the provision of CMRS by Tier 1 LECs.

II. DISCUSSION

A. Size Differences Must Be Considered.

In reaching its tentative conclusion that new non-structural safeguards should be imposed on Tier 1 LECs for the provision of in-region cellular, PCS and other CMRS services, the Commission has failed to adequately consider the significant differences in size and scope between the Tier 1 LECs and some of their potential competitors. Small and mid-size companies like CBT will be facing competition from extremely large national and global telecommunication providers such as AT&T, MCI, Time Warner, and the BOC's.

CBT, for example, is dwarfed by some of the competitors it will face. CBT, operating in a relatively small geographic area, with only 900,000 access lines and operating

¹ NPRM at ¶ 1.

revenue of \$600 million, faces a very different market in comparison to AT&T, with \$50 billion dollars revenue, MCI, with over \$15 billion dollars revenue, or Time Warner, with over \$8 billion dollars revenue. Indeed, proposed mergers between the BOCs, if approved, would result in LECs that eclipse CBT by 40 times in both access lines and revenue and operate in territories spanning several states and many major metropolitan areas.²

In discussing whether to require Tier 1 LECs to offer CMRS service through a separate affiliate, the Commission points to the examples of Pacific Telesis, Ameritech and BellSouth. From these examples, the Commission concludes that "it would appear to be an unexceptional and reasonable business practice to enter into new competitive ventures through a separate corporate affiliate."³ While this conclusion may be true for the BOCs, it is not necessarily true for Tier 1 LECs as well. CBT asserts that the decision whether to offer CMRS service through a separate affiliate is a business decision, and should not be decided as a result of regulatory mandate.

The Commission further concludes that "the cost and potential disruption of requiring non-Tier 1 LECs to establish new separate affiliates for the provision of cellular service would likely be significant, both in terms of direct costs of incorporation and lost efficiencies of joint operations, facilities and staff."⁴ CBT submits that this conclusion is also true for Tier 1 LECs, whose operations are more akin to the smaller non-Tier 1 LECs, than to much larger carriers such as the BOCs.

² See, CBT Comments, CC Docket No. 96-98, at 3.

³ NPRM at ¶ 117.

⁴ NPRM at ¶ 92.

If the Commission believes that additional safeguards are required during some period of transition to competition, then the Commission should look to the Act for guidance as to how differences in the size of carriers are to be addressed. Congress has recognized these differences and incorporated special provisions into the Act for smaller companies.⁵ These provisions, based on the Senate version of the legislation, were designed "to provide a level playing field" for smaller companies facing "competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources" of the smaller company.⁶

Congress has provided guidance which the Commission should follow in the implementation of any regulation or additional safeguard under the Act. Congress recognized within the Act the effect of size differences for carriers who have less than 2% of the nation's access lines. Congress intentionally differentiated between small/mid-size LECs and the seven BOCs, GTE and Sprint/United, which are substantially larger. The Commission should adopt 2% of the nation's access lines as a standard and not impose additional burdensome regulations on any LEC with less than 2% of the nation's access lines.

⁵ See Telecommunications Act of 1996, §§ 252(f)(1) and (2).

⁶ Telecommunications Act of 1996, Joint Explanatory Statement, p. 119.

B. Current Safeguards Provide Adequate Protection in the Emerging Competitive Market for Telecommunications Services.

In reviewing the appropriate non-accounting separate affiliate and non-discrimination safeguards necessary for the provision of CMRS and other services, the Commission must not overlook the primary purpose of the Act, i.e., the creation of a truly competitive telecommunications market. CBT has continuously stressed the need for regulatory symmetry in the creation of a competitive telecommunications market.⁷ It is CBT's contention that no participant in the competitive telecommunications market should be given a competitive advantage over another as a result of asymmetrical regulation. Competitors should be competing based on product differentiation and quality of service, and one competitor should not be favored over another as a result of the regulatory treatment it receives. To the extent that the Commission proposes asymmetrical treatment of competitors, or imposes additional regulatory restraints on any or all participants, such proposals would be contrary to the creation of a truly competitive market for telecommunications services.⁸

⁷ See Comments of CBT, at 42, *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Docket No. 96-98, filed May 16, 1996; Comments of CBT, at 13-14, *In the Matter of Price Cap Performance Review for Local Exchange Carriers*, Docket No. 94-1, filed December 11, 1995.

⁸ For example, in the Cincinnati market, three PCS licenses for 30 megahertz ("MHZ") were awarded. Two of these licenses were awarded to AT&T and GTE. It is unreasonable for the Commission to conclude that additional safeguards must be placed upon CBT in order to protect the interests of competitors the size of either AT&T or GTE. Tier 1 LECs must be provided sufficient regulatory relief to compete with carriers such as AT&T and GTE, who have far greater technical and financial resources.

Existing accounting safeguards applicable to the provision of CMRS service provide adequate protection for consumers, while allowing the development of a competitive market for such services. In this proceeding, the fact that Pacific Telesis filed a Nonstructural Safeguards Plan should not lead the Commission to conclude that additional structural and nonstructural safeguards are necessary for non-BOC providers of CMRS. Further, the Act in no way requires that the Commission place additional regulatory safeguards upon Tier 1 LECs.

While CBT has grave concerns about the imposition of any additional regulatory burdens on the provision of CMRS and other wireless services by Tier 1 LECs, CBT urges the Commission to make it clear that state commissions may not impose regulatory burdens which exceed the federal requirements. In certain cases, where the Commission has imposed adequate regulatory safeguard requirements on the provision of a particular service, state commissions have imposed more onerous restrictions which have made it more difficult for a carrier to effectively compete. CBT respectfully requests that the Commission preempt any regulations promulgated by state commissions on the provision of CMRS service that impose greater regulatory burdens than those already imposed at the federal level by the Commission.

C. Restrictions on Uses of CPNI

The Commission seeks comment on "whether the same type of organizational and procedural guidelines for the protection and dissemination of CPNI for which they are seeking comment relating to BOC cellular operations, should apply to the PCS operations of

any LEC (including non-Tier 1 LECs) or interexchange carrier possessing CPNI gathered in the provision of landline services."⁹ At the present time, non-BOC carriers do not have the same CPNI restrictions which the Commission has imposed on the BOCs, nor do these carriers have any experience in implementing such restrictions.

CBT submits that the Commission should examine the telecommunications market as it has been transformed by the advent of competition and advances in telecommunications technology. The new telecommunications market will provide customers with multiple choices for telecommunications service. This competition will come from cable providers, wireless providers, electric utilities, as well as more traditional telecommunication providers such as the IXC's and BOCs.

As a recent study performed on behalf of CBT indicates, customers desire to purchase a variety of products from a single carrier, and often seek to obtain discounts by purchasing a package of products from an individual carrier. Therefore, customers will expect their longtime provider of telecommunications service to keep them informed of new services and make those services available in an attractive package with the services which the customer already receives from their carrier. To meet this expectation, carriers will package products together in a manner which will offer customers additional benefits than might be available from separate suppliers.¹⁰ In order to effectively serve telecommunications customers by making them aware of new services about which they may be interested, carriers must be

⁹ NPRM at ¶ 121.

¹⁰ Comments of CBT, CC Docket 96-115 at 4.

able to make use of the information which they have about their customers and the services they use.

CBT reasserts its comments filed in the Commission's original CPNI proceeding.¹¹

CBT again asserts that any rules which restrict the use of CPNI must be fully reciprocal and treat all providers of telecommunications services equally.¹² CBT continues to assert that the promotion of a competitive environment would best be served by a broad interpretation of "telecommunications service" under the provisions of Section 222 of the Act.

Telecommunications service under the Act can and should be interpreted by the Commission to include not just the traditional telecommunications service package, but the total telecommunications service package as it evolves in the competitive environment envisioned by the Act. Such an interpretation would be consistent with current business practice and would best serve customers' interests and expectations by ensuring that they enjoy the full benefits of the evolving competitive market.¹³

In response to the Commission's queries concerning the application of Section 222 to the provision of CMRS and other services, CBT would suggest that all wireless services be included in a single grouping, along with local and interexchange service, under the single

¹¹ Comments of CBT, filed June 11, 1996, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-115, released May 17, 1996. See also, Telecommunications Act of 1996, Pub. L. 104-104, § 222.

¹² Comments of CBT at p. 2, filed June 11, 1996, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-115.

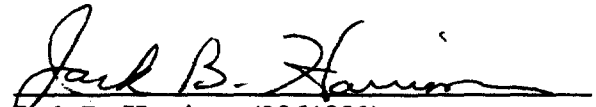
¹³ Comments of CBT at pp. 3-4, filed June 11, 1996, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-115.

category of "telecommunications service." This would allow carriers to more effectively serve customers by allowing them to use their existing customer information to make the customers aware of new services which are available to them.

III. CONCLUSION

CBT respectfully requests that the Commission considers these comments as it addresses the imposition of either structural or nonstructural safeguards on telecommunications carriers related to the provision of CMRS and other wireless services.

Respectfully submitted,



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